

REMARKS

Upon entry of this paper, no claims have been amended, no claims have been canceled, no claims have been added as new claims, and claims 30-80 have been withdrawn. Thus, claims 1-82 are presently pending in this application, of which claims 30-80 are withdrawn. No new matter has been added.

Affirmation of Election

During a telephone conversation on May 2, 2008, *provisional election was made to prosecute the invention of Group I, claims 1-29, 81, and 82, drawn to providing Operations, Administration, Maintenance, and Provisioning, as indicated in the Office Action. Applicant hereby affirms this election, without traverse.* Claims 30-80 have been withdrawn in accordance with this election.

Applicant expressly reserves the right to, at a later date, file one or more divisional applications under 35 U.S.C. §121, directed to the subject matter of any canceled claims.

Should the Examiner conclude that the remaining claims 1-29, 81, and 82 are allowable in view of the remarks herein, Applicant respectfully requests a telephone interview with the Examiner to discuss whether any of the withdrawn claims can be added back in, or whether they should be canceled via Examiner's amendment to enable the application to proceed to grant.

Claim Rejections – 35 USC § 102

Claims 1-4, 8, 10, 11, 18-22, 26, 27, 81, 82

Claims 1-4, 8, 10, 11, 18-22, 26, 27, 81, 82 are rejected under 35 U.S.C. 102(e) as being anticipated by Mohan et al (US 2005/0099952). Applicant traverses this rejection in view of the following remarks in which Applicant demonstrates the Mohan reference fails to qualify as prior art because Applicant conceived of his invention well before the earliest priority date of Mohan.

Specifically, Applicant respectfully submits that the subject matter of the pending claimed invention was conceived prior to the earliest priority date of the Mohan reference. The Mohan reference has an earliest possible priority date of November 10, 2003. Applicant submits herewith a Declaration pursuant to 35 U.S.C. §1.131 by the inventor, attesting that Applicant conceived of the invention at least as early as July 13, 2001 and worked diligently toward preparing and filing the present patent application. Furthermore, at least as early as September 29, 2003 a draft version of the patent application had been completed, with claims. Between September 29, 2003 and the date of execution of the application (November 11, 2003) Applicant worked diligently toward the filing of the application. On November 11, 2003 Applicant executed the Declaration and Power of Attorney, and the Application was filed on November 13, 2003.

As set forth in the Declaration, at least as early as July 13, 2001, Applicant had conceived of the concept of providing a system and method for supporting SDH/SONET OAMP on an Ethernet network. As such, Applicant had conceived of the concept of a Media Access Control (MAC) hardware device for supporting MAC Operations, Administration, Maintenance, and Provisioning (OAMP) functionality, comprising: a MAC OAMP Control sublayer for processing OAMP frames and maintaining OAMP state; and a plurality of MAC sublayers for carrying out MAC operations (*see* claim 1), before November 10, 2003, the earliest priority date of the Mohan reference (2005/0099952).

Furthermore, as set forth in the Declaration, at least as early as July 13, 2001, Applicant had conceived of the concept of providing a system and method for supporting SDH/SONET OAMP on an Ethernet network. As such, Applicant had conceived of the concept of a method of providing OAMP functionality on an Ethernet protocol network, wherein the MAC OAMP Control sublayer provides architecture for OAMP functionality in the form of at least one of administration, configuration management, performance evaluation, technical support, and billing (*see* claim 81) before November 10, 2003, the earliest priority date of the Mohan reference (2005/0099952).

Furthermore, as set forth in the Declaration, at least as early as July 13, 2001, Applicant had conceived of the concept of providing a system and method for supporting SDH/SONET

OAMP on an Ethernet network. As such, Applicant had conceived of the concept of a method of providing OAMP functionality on an Ethernet protocol network, wherein the MAC OAMP Control sublayer supports OAMP functionality in the form of at least one of Alarms, Remote Defects, Automatic Protection Switching, Loopbacks, Performance Monitoring, Trace Signals, Sync Signals, Bit Error Rate Tests, Data Communication Channel, Orderwire, Service Level Agreements, and OAMP operations (*see* claim 82) before November 10, 2003, the earliest priority date of the Mohan reference (2005/0099952).

All of the above dates of conception occurred in the United States as of the date indicated. Accordingly, conception of the invention as described in claims 1-29, 81, and 82 (i.e., the presently pending non-withdrawn claims) occurred prior to November 10, 2003, the earliest priority date of the Mohan reference (2005/0099952). Evidentiary support for the above statements is further provided in conjunction with the Declaration in the form of Exhibits A, B, and C, also submitted herewith, as indicated.

As stated by the Applicant/Inventor in the Declaration, and evidenced by the Exhibits, the subject matter of the pending claims 1-29, 81, and 82 was conceived of at least as early as July 13, 2001, and was diligently pursued and described in drafts of patent applications leading up to the ultimate filing date of November 13, 2003. Accordingly, the Mohan reference does not qualify as prior art to the presently pending claimed invention and application, and should be withdrawn, along with the present rejection.

Applicant additionally submits that Mohan fails to disclose A Media Access Control (MAC) hardware device for supporting MAC Operations, Administration, Maintenance, and Provisioning (OAMP) functionality, having a MAC OAMP Control sublayer for processing OAMP frames and maintaining OAMP state; and a plurality of MAC sublayers for carrying out MAC operations. Accordingly, Applicant respectfully submits that the present rejection should be reconsidered and withdrawn for lack of anticipation as well.

Claim Rejections – 35 USC § 103*Claims 1, 81, 82*

Claims 1, 81, 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lim et al (US 2004/0085905) in view of “OAM&P for EFM, Muir et al. Applicant traverses this rejection in view of the following remarks in which Applicant demonstrates the Lim reference fails to qualify as prior art because Applicant conceived of his invention well before the earliest priority date of Lim.

Specifically, Applicant respectfully submits that the subject matter of the pending claimed invention was conceived prior to the earliest priority date of the Lim reference. The Lim reference has an earliest possible critical reference date under MPEP § 2136.03 of October 21, 2003. Applicant submits herewith a Declaration pursuant to 35 U.S.C. §1.131 by the inventor, attesting that Applicant conceived of the invention at least as early as July 13, 2001 and worked diligently toward preparing and filing the present patent application. Furthermore, at least as early as September 29, 2003 a draft version of the patent application had been completed, with claims. Between September 29, 2003 and the date of execution of the application (November 11, 2003) Applicant worked diligently toward the filing of the application. On November 11, 2003 Applicant executed the Declaration and Power of Attorney.

Accordingly, Applicant respectfully requests withdrawal of this rejection.

Furthermore, Applicant respectfully submits the combination of Lim with the Muir reference fails to teach or suggest all claimed characteristics of claims 1, 81, and 82. The combination does not teach or suggest a Media Access Control (MAC) hardware device for supporting MAC Operations, Administration, Maintenance, and Provisioning (OAMP) functionality, comprising: a MAC OAMP Control sublayer for processing OAMP frames and maintaining OAMP state; and a plurality of MAC sublayers for carrying out MAC operations (*see* claim 1). The combination further fails to teach or suggest a method of providing OAMP functionality on an Ethernet protocol network, wherein the MAC OAMP Control sublayer provides architecture for OAMP functionality in the form of at least one of administration,

configuration management, performance evaluation, technical support, and billing (*see* claim 81). The combination further fails to teach or suggest a method of providing OAMP functionality on an Ethernet protocol network, wherein the MAC OAMP Control sublayer supports OAMP functionality in the form of at least one of Alarms, Remote Defects, Automatic Protection Switching, Loopbacks, Performance Monitoring, Trace Signals, Sync Signals, Bit Error Rate Tests, Data Communication Channel, Orderwire, Service Level Agreements, and OAMP operations (*see* claim 82). As such, Applicant submits that claims 1, 81, and 82 are patentable over the cited references.

Accordingly, Applicant respectfully requests withdrawal of this rejection.

Claims 5-7, 9, 12-17, 23-25, 28, and 29

Claims 5, 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Shivnan (US 2006/0227794). Claims 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Abe (US 2004/0017965). Claims 9, 25 are rejected under 35 U.S.C. 103(a) as being as being unpatentable over Mohan et al (US 2005/0099952) in view of Lim et al (US 2004/0085905). Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Wils et al (US 2004/0022185). Claims 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Jacobson et al (US 6,381,250). Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Krause et al (US 5,590,285). Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mohan et al (US 2005/0099952) in view of Sorenson et al (US 2008/0095083).

All of the above-referenced rejections rely upon the Mohan reference as the primary reference in support of the rejection. As detailed earlier herein, the Mohan reference fails to qualify as prior art because Applicant conceived of his invention well before the earliest priority date of Mohan and diligently pursued patent protection thereafter, including substantial completion of draft applications prior to the Mohan priority date.

Accordingly, Applicant respectfully requests withdrawal of all of the above rejections.

Furthermore, Applicant respectfully submits that each of the above-identified combinations fails to teach or suggest every characteristic of the identified claims (Claims 5-7, 9, 12-17, 23-25, 28, and 29). The combinations as indicated fail to teach or suggest a Media Access Control (MAC) hardware device for supporting MAC Operations, Administration, Maintenance, and Provisioning (OAMP) functionality, comprising: a MAC OAMP Control sublayer for processing OAMP frames and maintaining OAMP state; and a plurality of MAC sublayers for carrying out MAC operations (*see* claim 1). All rejected claims depend from claim 1, and therefore are allowable based on the allowability of claim 1 in addition to their own claim characteristics.

Accordingly, Applicant respectfully requests withdrawal of all of the above rejections.

CONCLUSION

In view of the foregoing, it is respectfully submitted that this application is now in condition for allowance. Applicant courteously solicits allowance of the claims in the form of a Notice of Allowance. Each of Applicant's claims contains characteristics that are neither disclosed nor suggested by the cited documents. For the reasons detailed herein, Applicant respectfully request that all rejections be reconsidered and withdrawn. This application is in condition for allowance, and notice of the same is earnestly solicited. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact Applicant's representative by telephone at the number indicated below.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: September 11, 2008

Respectfully submitted,

Electronic signature: /Sean D. Detweiler/
Sean D. Detweiler
Registration No.: 42,482
LAHIVE & COCKFIELD, LLP
One Post Office Square
Boston, Massachusetts 02109-2127
(617) 227-7400
(617) 742-4214 (Fax)
Attorney/Agent For Applicant